

**HOME Investment Partnership Program (HOME)
Reference 24 CFR 91.320(k)(2)**

1. A description of other forms of investment being used beyond those identified in 24 CFR Section 92.205 is as follows:

The State of Montana, Montana Department of Commerce (Commerce) will not use HOME funds beyond those identified in 24 CFR Section 92.205.

2. A description of the guidelines that will be used for resale or recapture of HOME funds when used for homebuyer activities as required in 24 CFR 92.254, is as follows:

The State will use recapture provisions for the Montana HOME program for all HOME-assisted homebuyer projects. State recipients and sub-recipients are eligible entities (entities) to carryout HOME-assisted homebuyer activities and must use the recapture provisions. The HOME-assisted homebuyer subsidy can be structured through zero-interest or low interest loans, grants, deferred payment loans, or interest rate subsidies.

3. A description of the guidelines for resale or recapture that ensures the affordability of units acquired with HOME funds, as required in 24 CFR 92.254 (a)(4), is as follows:

Recapture Requirements for Homebuyer Assistance

Commerce expects that all homebuyer assistance will include direct assistance to the homebuyer. Therefore, recapture provisions will be used. In the event circumstances arise where there is no direct subsidy to the homebuyer and HOME funds are used for a development subsidy only, the State of Montana will amend its Annual Action Plan to include a resale provision.

Any of the entities who have elected to provide homebuyer assistance under this program are required to specify their recapture provisions as applicable to the period of affordability. Written agreements for homebuyer assistance activities funded by Commerce will include the recapture provisions to ensure the period of affordability, principal residency requirements, and any other recapture terms and conditions.

During grant monitoring of the HOME program entities, the State will review the deed restrictions, trust indenture, covenants running with the land, mortgages, or other similar mechanisms placed on the HOME-assisted property to ensure the provisions being used are in accordance with those stated in the written agreement with the entities.

During the period of affordability, the entities must complete an annual compliance check to ensure that the initial homebuyer still resides in the property as their principal residence. The most current utility statement, proof of paid taxes, or certificate of homeowner's insurance are acceptable documentation.

Noncompliance occurs when the homeowner does not comply with the terms and conditions of the written agreement during the period of affordability, which includes when the homeowner does not occupy the unit as their principal residence, or when the home is voluntarily or involuntarily sold or a transaction changing ownership has occurred without notice and the recapture provisions were not enforced. In the event of noncompliance, the homeowner is subject to repayment of all HOME assistance invested in the housing unit. This is based on the amount of HOME direct subsidy invested

in the property (direct subsidy includes any program income or direct HOME funds invested). The repayment amount is not subject to any reductions that might be otherwise apply under the recapture provisions listed in this document.

Required Recapture Provisions

During the period of affordability, Commerce must be notified of a voluntary or involuntary sale or transaction changing ownership, and the applicable recapture provisions must be carried out. Recapture provisions must ensure that the PJ or entity recoups all or a portion of the HOME assistance to the homebuyers when a voluntary or involuntary sale or transaction changing ownership occurs during the period of affordability (see Period of Affordability Table). The HOME investment subject to recapture is based on the amount of HOME assistance that enabled the homebuyer to buy the dwelling unit. The HOME funds subject to recapture include any direct subsidy and may include down payment assistance, closing costs, the amount reducing the purchase price from fair market value to an affordable price, or any other HOME assistance provided directly to the homebuyer. The recaptured funds must be used to carry out HOME-eligible activities.

The recapture provisions must be established and enforced through a written agreement as well as deed restrictions, trust indenture, covenants running with the land, mortgages, or other similar enforcement mechanisms. Commerce or any entity will specify which enforcement mechanism it will use. In addition, a written agreement with each homebuyer will be executed and will specify the affordability requirements to enable Commerce to retain the authority to enforce them.

Principal Residency

The initial buyer must reside in the home as his/her principal residence for the duration of the period of affordability (see Period of Affordability Table).

Triggering Recapture

If an owner voluntarily or involuntarily transfers his or her property (e.g., through sale or foreclosure) during the period of affordability, the recapture provisions will go into effect.

Direct HOME Subsidy/Amount Subject to Recapture

The amount subject to recapture is the direct HOME subsidy. The direct HOME subsidy is the total amount of HOME assistance that enables the buyer to purchase the unit. This amount includes assistance for: down payment assistance, closing costs, the amount reducing the purchase price from fair market value to an affordable price, and any other HOME assistance provided directly to the homebuyer. Commerce has adopted the following provisions for recapture that are outlined in the HOME regulations and in CPD notice 12-003:

- Recapture of the entire direct HOME subsidy; and
- Owner investment is returned first.

Commerce may also adopt recapture provisions that differ from the model provisions in the HOME regulations. The particular recapture provision adopted (whether one of the models or an alternate approach) requires an amendment to the Annual Action Plan and with specific HUD approval.

Commerce or an entity can never recapture more than the amount of available net proceeds upon voluntary or involuntary sale or transaction changing ownership, unless noncompliance has occurred. Net proceeds is defined as the sale price of the home minus the superior loan repayment (not including HOME loans) and any closing costs. If the amount to be recaptured is more than the net proceeds (i.e., foreclosure or declining housing markets) the seller would be required to repay the balance of the net proceeds, which could be less than the original HOME direct subsidy.

Recapture of the Entire Direct HOME Subsidy

The following are the conditions under which Commerce will enforce the use of recapture of the Entire Direct HOME Subsidy as a recapture provision. In this recapture provision, Commerce or the entity

recaptures the entire amount of HOME subsidy provided to the homebuyer before the household receives proceeds from the sale of the property. This recapture is limited to the net proceeds available from the voluntary or involuntary sale or transaction changing ownership during the period of affordability.

This recapture provision will be enforced in the event of a voluntary or involuntary sale or transaction changing ownership that occurs during the period of affordability years zero through 9, as applicable to the Period of Affordability Table. Enforcement of the recapture provision that occurs during the period of affordability year 10 through year 15 (see Period of Affordability Table) will follow the recapture provision: Owner Investment is Returned First. If the period of affordability is less than 10 years, recapture of the entire direct HOME subsidy will only be used, no other recapture provision will be permitted. This will be enforced through the written agreement with the household.

As an example, if the assisted unit received \$12,000 in HOME assistance and the unit is voluntarily or involuntarily sold or a transaction changing ownership has occurred during year 4, the entire direct HOME subsidy (\$12,000) would need to be repaid according to the net proceeds calculation. If the assisted unit received \$42,000 in HOME assistance and the unit is voluntarily or involuntarily sold or a transaction changing ownership has occurred during year 11, the Entire Direct Subsidy recapture provision would not be triggered, rather the Owner Investment Returned First recapture provision would be triggered.

Owner Investment Returned First

The following are the conditions under which Commerce will enforce the use of Owner Investment Returned First as a recapture provision. In this recapture provision, Commerce or the entity recaptures all or a portion of the HOME subsidy provided to the homebuyer, but allows the homebuyer to recover their entire investment (downpayment and capital improvements made by the owner since the purchase) before recapturing the HOME investment. This recapture includes the net proceeds available from the voluntary or involuntary sale or transaction changing ownership during the period of affordability. However, if net proceeds are insufficient, the homebuyer may not receive their entire investment back, and Commerce or the entity may not be able to recapture the full amount due from the net proceeds available.

Eligible capital improvements include permanent property improvements that improve or enhance the basic livability or utility of the property, but are not normal or recurring maintenance items. The value of capital improvements will be based on the actual costs of the improvements as documented by the homeowner's receipts.

This recapture provision will be enforced in the event of a voluntary or involuntary sale or transaction changing ownership that occurs during the period of affordability years 10 through the minimum years (see Period of Affordability Table) to include owner investment returned first. This will be enforced through the written agreement with the household.

As an example, if the assisted unit received \$40,000 and the unit is voluntarily or involuntarily sold or a transaction changing ownership has occurred during year 10, the homebuyer's investment would be calculated based on the documented capital improvements made during the period of affordability and any investment made during the original sale. This amount would be deducted from the amount to be repaid according to the net proceeds calculation that would be paid to homeowner and Commerce or the entity.

Period of Affordability

The recapture provisions are in effect for a period of affordability. This period is based on the amount of direct HOME subsidy to the buyer, as follows:

HOME Assistance to Buyer	Period of Affordability
Less than \$15,000	5 years
\$15,000 - \$40,000	10 years
More than \$40,000	15 years



Newly constructed rental	20 years
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4. Plans for using HOME funds to refinance existing debt secured by multifamily housing that is rehabilitated with HOME funds along with a description of the refinancing guidelines required that will be used under 24 CFR 92.206(b).

Not applicable.